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2/17/06

BEFORE THE ILLINOIS COMMERCE COMMISSION

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Docket No. 01-0120

Rebuttal Testimony of James D. Ehr  
On Behalf of SBC Illinois

PUBLIC VERSION

January 5, 2006

OFFICIAL FILE

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Witness  
Date 2/17/06

1   **I.    INTRODUCTION**

2   **Q1.   PLEASE STATE YOUR NAME.**

3   A1.   My name is James D. Ehr.

4   **Q2.   ARE YOU THE SAME JAMES D. EHR WHO FILED DIRECT TESTIMONY IN**  
5   **THIS CASE ON BEHALF OF SBC ILLINOIS ON DECEMBER 14, 2005?**

6   A2.   Yes.

7   **II.   PURPOSE OF TESTIMONY**

8   **Q3.   PLEASE DESCRIBE THE PURPOSE OF YOUR REBUTTAL TESTIMONY.**

9   A3.   The purpose of my rebuttal testimony is to respond to the Direct Testimony of CLEC  
10       Witnesses Julia A. Redman Carter (McLeodUSA), William Dvorak (CIMCO), and Tom  
11       Waterloo (Forte), and the Direct Testimony of Staff Witness Samuel S. McClerren.

12   **Q4.   DO YOU HAVE ANY GENERAL COMMENTS ON THE CLEC AND STAFF**  
13   **TESTIMONY?**

14   A4.   Yes. Although these witnesses argue that the "01-0120" plan should be extended for the  
15       period from October – December 2002, they all fail to address the issue in its proper  
16       context. As I showed in my Direct Testimony, the Commission need not and should not  
17       extend the plan for that period, because (i) SBC Illinois had already improved wholesale  
18       performance to high quality levels by October 2002, and (ii) there were ample other  
19       incentives in place for SBC Illinois to maintain high quality through December 2002 –  
20       including in particular, the detailed investigation of wholesale performance by this  
21       Commission that was going on at that time for purposes of assessing SBC Illinois'  
22       planned application to provide long-distance service under Section 271. These witnesses

fail to consider SBC Illinois' overall good performance, or the other incentives that were in place.

First, Ms. Redman Carter of McLeodUSA does not provide any opinion of her own about wholesale performance or the remedy plan at all: she simply recites testimony that other witnesses filed in the Alternative Regulation docket well before October 2002.

Second, Mr. Dvorak (CIMCO) and Mr. Waterloo (Forte) do not address overall performance. Although they recite complaints about SBC Illinois' performance in a few selected areas for their companies, they fail to examine performance measured by the 01-0120 Remedy Plan or correlate their isolated examples to the 01-0120 Remedy Plan. In short, their issues are unrelated to performance measured by the plan.

Finally, Staff Witness McClerren's testimony focuses solely on the amounts SBC Illinois was required to pay (both to CLECs and the State), rather than the level of service SBC Illinois delivered (the purpose of a remedy plan).

**III. RESPONSE TO MS. REDMAN CARTER'S TESTIMONY**

**Q5. HOW DO YOU RESPOND TO SECTIONS III, IV AND V OF MS. REDMAN CARTER'S TESTIMONY?**

A5. Ms. Redman Carter's testimony does not contain any analysis of performance, or any consideration whether an extension of the 01-0120 plan would be appropriate given the level of performance and the presence of other incentives at the time. In fact, Ms.

~~Redman Carter does not provide any analysis of her own. She simply recites testimony that other witnesses, who are not here, provided in the Alternative Regulation docket.~~

44 ~~None of these witnesses addressed SBC Illinois' performance or incentives as of October~~  
45 2002 either. (In fact, they could not have done so, as the testimony she recites was filed  
46 in late 2000 and early 2001, well before October 2002 and well before the Commission's  
47 Section 271 investigation into wholesale performance began.) There is simply no  
48 discussion of real performance data, or incentives, at all.

49 **Q6. MS. REDMAN CARTER APPEARS TO AGREE THAT SBC ILLINOIS'**  
50 **PERFORMANCE HAD IMPROVED, BUT SHE CONTENDS THAT THE**  
51 **COMMISSION SHOULD NOT LOOK AT ACTUAL PERFORMANCE BASED**  
52 **ON A "CHICKEN AND THE EGG" ARGUMENT (LINES 642-655). IS HER**  
53 **ANALOGY CORRECT?**

54 **A6.** No. Here again, Ms. Redman Carter is looking at the remedy plan question in the  
55 abstract. Her "chicken and egg" analogy falls apart as soon as you consider the real-  
56 world evidence.

57 First, by October 2002, the "chicken" had already been hatched, in that SBC  
58 Illinois already had improved its performance to a high level and already had electronic  
59 systems and manual processes in place to provide wholesale service. The only question  
60 was whether there were adequate incentives to keep those improvements in place for this  
61 three-month period, and I have shown that there were. There is no need to find an "egg"  
62 or to consider how to achieve good performance.

63 Second, Ms. Redman Carter is assuming that the 01-0120 plan was the "egg" that  
64 caused SBC Illinois' good performance in late 2002. I have already shown in my Direct  
65 Testimony (lines 214-250 and table at line 189) that her theory is incorrect, because SBC  
66 Illinois' improvements began before the 01-0120 plan took effect, and continued after the  
67 plan was terminated. As a result, in Docket No. 01-0662, the Commission rejected the

CLEC view that the 01-0120 plan was the cause of SBC Illinois' good performance in late 2002 (Direct Testimony, lines 235-250).

**Q7. IN RESPONSE TO HER LAST QUESTION REGARDING ALTERNATIVES AVAILABLE TO THE COMMISSION IN OCTOBER 2002, IS MS. REDMAN CARTER COMPLETE IN HER ASSESSMENT (LINES 664-703)?**

A7. No. She ignores the fact that there were alternative remedy plans available to CLECs in October 2002. First, SBC Illinois had reached agreement with TDS on a compromise plan. The ultimate agreement allowed TDS to receive remedies under the 01-0120 plan, with the compromise plan available as a fallback in case the Commission's order extending the plan was reversed (as it was). Any CLEC that wanted to "MFN" into the TDS agreement or that desired a similar compromise could have negotiated one and avoided the need for further proceedings.

Second, several CLECs were still under the original Condition 30 plan. CLECs wishing to participate in the 01-0120 Remedy plan needed to provide an "Opt-In" form to SBC Illinois and the Commission. Many CLECs did not take that action. SBC Illinois continued making remedy payments to those CLECs under the original plan.

**Q8. IS SBC ILLINOIS OFFERING TO ALLOW CLECS TO RETROACTIVELY ADOPT THE COMPROMISE PLAN OR THE ORIGINAL PLAN FOR THE OCTOBER – DECEMBER 2002 PERIOD?**

A8. No, SBC Illinois is not proposing that the Commission adopt either plan for the October – December 2002 period. These were agreements that we made available to CLECs and the Commission in order to avoid further litigation at that time. The Commission (and the CLECs here) did not accept those settlement proposals, and SBC Illinois had to go to court to obtain relief from the Commission's Order on Reopening. Of course, we are still

92 willing to negotiate with individual CLECs, but do not believe it would be appropriate for  
93 any remedy plan to be imposed retroactively.

94 **IV. RESPONSE TO MR. DVORAK AND MR. WATERLOO**

95 **Q9. MR. DVORAK CONTENDS THAT THE RESULTS FOR THREE**  
96 **PERFORMANCE MEASURES INDICATE "SIGNIFICANT PROBLEMS"**  
97 **DURING THE FALL OF 2002 (LINES 42-44). DO YOU AGREE?**

98 A9. No. The three Performance Measures ("PMs") are "Billing Accuracy", "Billing  
99 Completeness", and "Mechanized Provisioning Accuracy". These performance measures  
100 are numbered as PMs 14, 17 and 12, respectively. I discuss each PM below, but the first  
101 problem with Mr. Dvorak's testimony is that he misses the big picture. In late 2002, SBC  
102 Illinois reported over 150 performance measures for approximately 160 CLECs per  
103 month. With that many measures, assessing performance for that many CLECs – and  
104 with statistical tests that can be expected to falsely show a "miss" on 5 percent of the  
105 parity tests conducted for each CLEC – there are bound to be a few misses in each month,  
106 even when performance is quite good. The important point is that our overall pass rate  
107 for these months was over 90 percent, and the Commission decided that the few misses  
108 were not material to SBC Illinois' overall compliance and commitment to fair  
109 competition (in Docket No. 01-0662, where it analyzed performance for September –  
110 November 2002, see Direct Testimony lines 198-213). The fact that Mr. Dvorak only  
111 discusses three PMs out of the total 150 simply confirms that SBC Illinois' overall  
112 performance was good.

113 **Q10. TURNING TO THE THREE MEASURES DISCUSSED BY MR. DVORAK**  
114 **(LINES 42-44), PLEASE ADDRESS HIS TESTIMONY ON “BILLING**  
115 **ACCURACY.”**

116 A10. Mr. Dvorak’s testimony demonstrates a basic misunderstanding about the nature of this  
117 measure. The Billing Accuracy PM that was in place in Fall 2002 did not measure the  
118 accuracy of all bills for all CLECs. Rather, the PM reported a sample of data taken from  
119 CLEC bills, and measured whether the amount on the bill was calculated correctly from  
120 the inputs provided (as opposed to whether those inputs were correct). Further, this PM  
121 relates to the bills SBC Illinois provides to CLECs. It does not relate to bills provided to  
122 CLEC end user customers, so missing the measure does not affect those end user  
123 customers. This PM was deleted in 2005 as CLECs recognized the PM did not provide  
124 any meaningful measure of Billing Accuracy.

125 **Q11. PLEASE ADDRESS THE SECOND MEASURE, PROVISIONING ACCURACY.**

126 A11. As with Billing Accuracy, Mr. Dvorak’s discussion of the Provisioning Accuracy  
127 measure (PM 12) does not accurately portray the purpose of the measure, nor SBC  
128 Illinois’ performance. As I have discussed with CLECs in the PM collaboratives, in late  
129 2002 PM 12 did not capture real “provisioning accuracy” – that is, whether SBC Illinois  
130 provisioned service in accordance with the CLEC’s request. Rather, it simply measured  
131 whether SBC Illinois placed the product and service identifiers on the internal SBC  
132 service order that correspond to the products and services ordered by the CLEC on its  
133 Local Service Request (“LSR”). Due to difficulties with the measurement calculation at  
134 that time, there were occasions where SBC Illinois’ performance measurement systems  
135 did not compare the proper version of the LSR to the proper version of the internal

136 service order(s), resulting in reporting of service orders as incorrectly generated  
137 compared to the LSR when, in fact, they were correctly generated. Thus, the  
138 performance "misses" on this PM were overstated, and although there were times when  
139 the correct identifiers were not used by SBC Illinois, this "failed" comparison did not  
140 necessarily translate into provisioning errors or customer impact, as Mr. Dvorak claims.

141 In fact, SBC Illinois' installation performance for CIMCO was quite good. The  
142 better measure of provisioning accuracy is PM 35, Percent Trouble Reports Within 30  
143 Days (I-30) Of Installation. This measure identifies the number of trouble reports  
144 submitted within 30 days of a completed installation order on the same line, and reports  
145 that as a percentage of total installations. (A "trouble report" within that time frame  
146 suggests a problem in provisioning.) SBC Illinois' results on this measure were  
147 excellent. For Cimco, for the six months July 2002 – December 2002, SBC Illinois  
148 reported installation of \*\*\* \*\*\* orders in PM 35, with only \*\*\* \*\*\* troubles within  
149 30 days of installation. That translates to a \*\*\* \*\*\* rate of installation trouble reports,  
150 which was well in line with the governing parity standard. Considering all the categories  
151 for this measure across these six months, SBC Illinois performed \*\*\* \*\*\* statistical  
152 tests of its performance, and passed the parity test \*\*\* \*\*\* times: a "pass rate" of over  
153 \*\*\* \*\*\* percent. The submeasures where parity was not achieved represented a total of  
154 \*\*\* \*\*\* trouble reports on lines with installation orders within the previous 30 days, of  
155 which at most \*\*\* \*\*\* would have been subject to remedy payment. This is \*\*\* \*\*\*  
156 of the \*\*\* \*\*\* orders completed, or \*\*\* \*\*\* percent.



Looking at PM 35 performance for the three months in question here, October – December 2002, \*\*\* tests were performed for Cimco, with \*\*\* of those tests meeting the parity standard. Total provisioning trouble reports recorded for those three months was \*\*\* compared to \*\*\* installation orders reported, for a rate of \*\*\* percent orders receiving a provisioning trouble report trouble. Of those \*\*\* trouble reports, only \*\*\* were for tests where parity was not met and remedies would have been paid. This demonstrates that SBC Illinois' provisioning accuracy was very good, and Mr. Dvorak's assertion that "every time SBC failed to meet Provision Accuracy performance measure" CIMCO "incurred a loss" is simply untrue.

**Q12. PLEASE ADDRESS THE THIRD MEASURE, BILLING COMPLETENESS (PM 17).**

A12. Here too, Mr. Dvorak's assertions do not accurately reflect SBC Illinois' true performance. "Billing Completeness" is a measure that simply compares the time it takes to post a completed order in the billing systems. UNE-P was one of the products CIMCO purchased in quantity, and PM 17 used a standard of parity with SBC Retail as its basis for determining "pass" or "fail" for that product. However, because the wholesale billing completion process had additional steps that added several days to the completion of updates to the billing systems, it was difficult, if not impossible to keep up with the retail standard. Accordingly, the reported result regularly showed "out-of-parity" – not because of any performance problem, but because of an inherent difference between the retail and wholesale figures that were being compared. In recognition of the problems with this measurement, CLECs and SBC agreed to implement a measure of post-to-bill notification timeliness (PM 17.1) in early 2005 and to remove remedies from PM 17.

The new PM 17.1 is assessed against an 8-day benchmark, rather than parity, in recognition of this difference between retail and wholesale processes.

More importantly, there was no real impact on end users. Although it took a couple days longer to post the CLEC order to the wholesale billing systems, the customer still received timely notice of the service order completion. PM 17 simply reflects the time it took for the order to be posted so that it could appear on a CLEC's wholesale bill from SBC Illinois. Given that a billing cycle has about 30 days, an extra two days for processing typically does not mean a delay in billing. Therefore, there is no basis for Mr. Dvorak's suggestion that the reported Billing Completeness performance somehow caused CIMCO problems with customers.

**Q13. HOW DO YOU RESPOND TO MR. DVORAK'S ASSERTION THAT "ON HUNDREDS OF OCCASIONS OUR ORDERS WERE DELAYED UNNECESSARILY" (LINES 74-75)?**

A13. Mr. Dvorak does not tie his claim to any particular performance measure, so his assertion has no bearing on the remedy plan. Let's look at the actual performance data on orders. SBC Illinois met over \*\*\* of due dates for CIMCO for those same months, as demonstrated in the performance results reported for PM 29, Percent SBC Midwest Caused Missed Due Dates. According to this measure, SBC Illinois completed \*\*\* orders for Cimco, and missed only \*\*\* due dates due to an SBC Illinois cause. Looking at the three months in question here, October – December 2002, \*\*\* tests were performed for Cimco, and only \*\*\* of those tests did not meet the parity standard. Total installation orders recorded for those three months was \*\*\* , with only \*\*\* , or \*\*\* percent of the order due dates being missed by SBC

Illinois. Of those \*\*\* orders, only \*\*\* were for tests where parity was not met and remedies would have been paid. These results provide clear evidence contradicting Mr. Dvorak's unsupported assertion that SBC Illinois unnecessarily delayed "hundreds" of Cimco's orders.

**Q14. HOW DO YOU RESPOND TO MR. DVORAK'S ASSERTIONS THAT AN EXTENSION OF THE 01-0120 PLAN IS NECESSARY TO GIVE CIMCO COMPENSATION FOR "LOSSES" (LINES 35-36, 52-54, 89-90, 95-97, 103-104)?**

A14. Mr. Dvorak does not provide any evidence or calculation of any "losses" by CIMCO, so there is simply no basis for his statements. Mr. Dvorak provides no evidence to support his assertion that the remedy payment levels called for in the 01-0120 Remedy Plan are required to compensate CLECs.

**Q15. DOES MR. WATERLOO MAKE SIMILAR ASSERTIONS TO THOSE OF MR. DVORAK?**

A15. Yes he does. In fact, several of his assertions are identical, or nearly so, to Mr. Dvorak's, and in the same manner are totally unsupported.<sup>1</sup> In particular his remarks regarding remedy payments being compensation to CLECs mimic Mr. Dvorak's. On performance, his only new assertions relate to a group of orders to restore service that he claims were erroneously rejected. This issue is addressed by SBC Illinois Witness Fred Christensen in his separate rebuttal. From a remedy plan perspective, though, Mr. Waterloo's complaints are irrelevant. Our performance measures at that time did not measure the timeliness of restoring service after a suspension request. Further, there is no measurement or remedy, even under the 01-0120 plan, for "erroneous rejections." The

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<sup>1</sup> Direct Testimony of Tom Waterloo on behalf of Forte Communications, Inc., ICC Docket No. 01-0120, dated December 14, 2005 ("Waterloo Direct"), Lines 113-118, 153-155.

225 only remedied measure for rejections addresses the timeliness of the notice we provide to  
226 the CLEC in rejecting the request (PM 10), \*\*\*  
227 \*\*\* . Even if the 01-0120 plan were extended, then, Forte would not have received  
228 remedies under that plan for the incident he mentions.

229 **Q16. MR. WATERLOO CONTENDS THAT "SBC'S WHOLESALE SERVICE**  
230 **FAILURES WARRANT THE REMEDIES CONTAINED IN THE 01-0120**  
231 **REMEDY PLAN." DOES HE PROVIDE ANY EVIDENCE TO SUPPORT HIS**  
232 **CONCLUSION?**

233 A16. No. He simply says so, then states that the "Commission ordered SBC to abide by the  
234 more stringent standards."<sup>2</sup> He fails to provide any evidence supporting his conclusion,  
235 and his explanation does not even address the question. The performance standards are  
236 not at issue here, only the applicable remedies.

237 **Q17. MR. WATERLOO COMPLAINS ABOUT SBC ILLINOIS' PERFORMANCE**  
238 **FOR FORTE IN THE JULY 2002 - DECEMBER 2002 PERIOD. IS HE**  
239 **CORRECT?**

240 A17. No. Over the period July - December 2002, SBC Illinois performance for Forte met or  
241 exceeded \*\*\* \*\*\* of the individual performance measure tests conducted. For the  
242 prior six-month period (January - June 2002) SBC Illinois met or exceeded the standard  
243 of comparison for \*\*\* \*\*\* of the tests conducted. And for the six-month period  
244 following July - December 2002, SBC Illinois performance, SBC Illinois service to Forte  
245 was essentially the same (\*\*\* \*\*\* tests met).<sup>3</sup> These results clearly demonstrate that  
246 Mr. Waterloo is incorrect. SBC Illinois' performance for Forte was high in the first half

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<sup>2</sup> Waterloo Direct, Lines 57-58.

<sup>3</sup> These percentages reflect the number of individual performance measure tests conducted where a determination of "pass" or "fail" could be determined, using the 01-0120 Remedy plan's constant critical Z value of 1.645. All benchmark measures were assessed as absolute benchmarks (no statistical testing). For months prior to September, use of the actual calculated Z value and statistical testing of benchmark measures, as required in the 98-0555 Merger Remedy Plan, would have yielded a slightly greater percentage met.

of 2002, improved in the second half of 2002 to a very high level, and continued at that very high level through the first half of 2003.

**Q18. DOES MR. WATERLOO'S RESPONSE TO THE QUESTION AT LINES 120-121 OF HIS TESTIMONY MAKE ANY SENSE?**

A18. No. In his response Mr. Waterloo lists "two main factors" he believes the Commission should consider with respect to SBC Illinois performance. He then claims (incorrectly as I have shown in response to Question 14 above) that the remedy payments should be sufficient to "compensate CLECs for the economic cost of SBC's failures."<sup>4</sup> He then begins discussing items such as "priority of a particular item" and "SBC's overall performance for CLECs or its own customers or affiliates," claiming that those things should have no bearing on whether, how or when a CLEC should be "compensated for their losses."<sup>5</sup> And he follows this with the statement that "By adding in various means to reduce payments, SBC has ensured that CLECs will not be compensated."<sup>6</sup> Mr. Waterloo is mistaken, because the 01-0120 Remedy Plan created by the Commission does not assign priorities to PMs, and does not assess payments to CLECs based on any measure of overall performance. And most importantly, the remedy plan at issue here was created by the Commission, so it is improper for Mr. Waterloo to criticize SBC Illinois for any features of that plan.

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<sup>4</sup> Waterloo Direct, Lines 128-129.

<sup>5</sup> Waterloo Direct, Lines 129-131.

<sup>6</sup> Waterloo Direct, Lines 132-133.

V. RESPONSE TO MR. MCCLERREN'S TESTIMONY

**Q19. DID SBC ILLINOIS NEED THE 01-0120 REMEDY PLAN TO, AS MR. MCCLERREN SUGGESTS, PROVIDE IT THE INCENTIVE TO PROVIDE QUALITY PERFORMANCE TO CLECS (LINES 229-244)?<sup>7</sup>**

A19. No. As I discussed in my Direct Testimony, SBC Illinois was already providing high quality performance by that time, and there were other factors in place that provided ample incentives to maintain that quality performance (in particular, the ongoing Section 271 proceedings). Mr. McClerren is simply looking at the question in a vacuum, as if there were no performance data before October 2002 and no incentives other than the remedy plan. And in any case, the performance SBC Illinois provided is a historical fact and cannot be changed by the result of this proceeding.

**Q20. DOES MR. MCCLERREN USE A CORRECT APPROACH TO ANALYZING THE INCENTIVES FOR SBC ILLINOIS FOR THE MONTHS IN QUESTION?**

A20. No. Mr. McClerren's testimony simply states the dollar amounts SBC Illinois was required to pay under the 01-0120 Remedy Plan for October – December 2002. He does not provide any assessment as to the level of performance SBC Illinois provided to CLECs, and he does not provide any analysis to show whether the dollar payments were appropriate in light of performance.<sup>8</sup> Specifically, Mr. McClerren states that the payments SBC Illinois was required to make in October 2002 for wholesale performance were the highest. He states that SBC Illinois' service quality was "significant underperforming" in that month, but he does not even discuss what that actual performance was: he ignores SBC Illinois' overall pass rate of over 90 percent, and he does not discuss any performance measures. The Commission should focus on

<sup>7</sup> McClerren Direct, Lines 229-244.

<sup>8</sup> McClerren Direct, Lines 249-259.

288 performance, not the dollar amounts paid. To understand performance you have to look  
289 at performance results, rather than payment amounts. Payment amounts are affected by  
290 the terms of the plan, the number of CLECs doing business, the number participating in  
291 the remedy plan, the activity they generate, and many other variables. And as the  
292 Commission itself stated in Docket No. 01-0662, the payments under the 01-0120 plan  
293 were inappropriate and excessive in relation to SBC Illinois' good performance in late  
294 2002 (Direct Testimony Lines 205-211).

295 This is particularly true when one looks at October 2002, the month selected by  
296 Mr. McClerren. Even though the raw dollars of payments for October 2002 were high,  
297 SBC Illinois' performance for October 2002 was better than in September 2002 and in  
298 December 2002 – June 2003. In fact, of the entire time that the 01-0120 Remedy Plan  
299 was in effect (September 2002 – June 2003), SBC Illinois' October 2002 performance  
300 was better than any month other than November 2002. The fact that remedies were  
301 highest in the month with the second best performance, simply points out the  
302 inappropriateness of the payments SBC Illinois was required to make under the 01-0120  
303 Remedy Plan.

304 **Q21. IS MR. MCCLERREN'S ASSERTION THAT THE OCTOBER 2002 PAYMENT**  
305 **WAS IMPORTANT TO SBC ILLINOIS SOLVING A SUPPOSED**  
306 **"WHOLESALE SERVICE QUALITY PROBLEM" ACCURATE?**<sup>9</sup>

307 A21. No. Mr. McClerren erroneously assumes that there was a "wholesale service quality  
308 problem" affecting SBC Illinois and CLECs at that time. As I showed in my Direct  
309 Testimony, SBC Illinois' performance was excellent, and the Commission itself

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<sup>9</sup> McClerren Direct, Lines 267-270.

recommended approval of SBC Illinois Section 271 application to the FCC based on performance for the period September – November 2002. Clearly there was no wholesale service quality “problem.”

**Q22. DOES THIS SAME REASONING REFUTE MR. MCCLERREN’S STATEMENT THAT THE “CHANGED CONDITIONS NOTED BY THE COMMISSION [IN THE 271 DOCKET] WERE A DIRECT RESULT OF THE CONTINUOUS MAINTENANCE OF THE 01-0120 REMEDY PLAN IN THE PREVIOUS PERIODS?”<sup>10</sup>**

**A22.** Yes. Mr. McClerren again ignores actual reported performance results, simply assuming that overall performance improved because of the 01-0120 Remedy Plan. My Direct Testimony shows (lines 214-238), and the Commission held in Docket No. 01-0662 (Direct Testimony lines 238-247), that the actual performance improvements occurred before implementation of the 01-0120 plan, and I have also shown that those improvements continued long after the plan was terminated. Mr. McClerren’s assertion that the Commission’s positive Section 271 recommendation was based on the “continued maintenance” of the 01-0120 Remedy Plan is wrong, because the Commission’s Section 271 order *terminated* the 01-0120 plan.

But most importantly, Mr. McClerren’s own testimony contradicts his conclusion. Mr. McClerren states that it is unreasonable to anticipate that the remedy plan could or would have sent the intended economic signals in only a two month period.”<sup>11</sup> He explains that there is a nearly two month lag from the end of a month to the actual reporting and payment of remedies for that month. If that is true, then clearly the payment amounts generated by the 01-0120 Remedy Plan for September – November

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<sup>10</sup> McClerren Direct, Lines 310-312.

<sup>11</sup> McClerren Direct, Lines 242-244.



2002 (the months before the Commission in the Section 271 docket) could not have provided incentives, or "economic signals," that drove SBC Illinois' performance levels during those same months, since those payments were not even known until weeks after the performance month had ended.

**Q23. MR. MCCLERREN STATES THAT SBC ILLINOIS DID NOT CONTEST THE IMPOSITION OF THE 01-0120 REMEDY PLAN FOR EARLY 2003 (LINES 222-223). IS THIS CORRECT?**

A23. Absolutely not. In fact, SBC Illinois appealed that aspect of the Commission's Alternative Regulation Order. But more importantly, in January 2003, less than three weeks after the Alternative Regulation Order was issued, SBC Illinois asked the Commission to terminate the 01-0120 Remedy Plan (in testimony I filed in the Section 271 proceeding, Docket No. 01-0662) and proposed the Compromise Remedy Plan as a replacement for the 01-0120 Remedy Plan. Clearly, SBC Illinois did not agree with the 01-0120 Remedy Plan. In the end, the Commission agreed with SBC Illinois, replacing the 01-0120 Remedy Plan with a modified version of the Compromise Remedy Plan in its May 2003 Order in Docket No. 01-0662.

**VI. CONCLUSION**

**Q24. COULD YOU PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY?**

A24. Staff and CLEC witnesses do not provide testimony relevant to the issue. The bottom line is that SBC Illinois provided good performance in October through December of 2002 and that continued good performance was encouraged by the internal service standards of the company, by market conditions and by the pending 271 application.

355           There is no plan that can be put in place retroactively that will change the historic  
356           performance of SBC Illinois.

357   **Q25. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

358   A25. Yes.